

DETAILED ACTION

1. This communication is a First Office Action Non-Final rejection on the merits. Claims 1-19, as amended by preliminary amendment dated August 18, 2006, are currently pending and have been considered below.

Claim Objections

2. Claim 1 is objected to because of the following informalities: line 12, claim 1 recites the phrase "bag o be" which appears to be a typo of the word --to--, thus the phrase should read --bag to be--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-3, 5 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by J.L. Kastamo et al. (3,343,719) hereafter Kastamo.**

As per claim 1, Kastamo discloses a method of distributing flexible bags filled with a beverage or liquid food product under sterile conditions to a consumer of said beverage or liquid food product in return for payment (Col. 2, lines 13-33; discloses that the invention is directed toward a method of delivering liquid goods, in a sanitary environment. Col. 3, lines 28-65; disclose that this process includes flexible bags and they are delivered to their customers) and comprising the following steps of:

a) locating said flexible bags, filled with said beverage or liquid food product, in a bulk transport container having a capacity for a plurality of flexible bags (Col. 3, lines 66 through Col. 4, line 12 and Col. 5, lines 44-51; disclose that flexible bags are filled with liquid and transported to the customer therefore they are located in the transport vehicle which is a bulk transport container which holds a plurality of flexible bags);

b) transporting, by a commercial distributor, of the bulk transport container, in which the filled flexible bags are located, to a consumer of said beverage or liquid food product (Col. 3, lines 66 through Col. 4, line 12 and Col. 5, lines 44-51; disclose that a truck is used to deliver the flexible bags containing liquid to the customer or consumer);

c) unloading a required quantity of flexible bags filled with beverage or liquid food product for delivery to the consumer (Col. 3, lines 66 through Col. 4, line 12 and Col. 5, lines 44-51; discloses that the housewife or consumer receives the flexible bag containing the liquid, therefore the flexible bag is unloaded from the delivery truck); and

d) delivering each flexible bag for dispensing the beverage or liquid food product container in the flexible bag to be consumed by an end consumer, wherein, through each step, hazard and critical control points during distribution and dispensing are minimized (Col. 3, lines 66 through Col. 4, line 12 and Col. 5, lines 44-51; discloses that the housewife or consumer receives the flexible bag containing the liquid to be consumed. Col. 2, lines 13-33; discloses that the entire process is done at a very high degree of sanitation thus minimizing the hazard and critical control points during distribution and dispensing).

As per claim 2, Kastamo discloses the above-enclosed invention, Kastamo further discloses further comprising the step of filling said flexible bags through a spout or tap forming part of each flexible bag thereby avoiding residue from a sealing process (Col. 4, line 74 through Col. 5, line 12; discloses that the flexible bags are filled through a spout or tap forming part of the flexible bag thus avoiding residue from a sealing process).

As per claim 3, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein the commercial distributor fills the flexible bags (Col. 4, line 74 through Col. 5, line 12, Col.5 lines 44-51; discloses that the bags are filled and then distributed thus the commercial distributor fills the bags. Col. 3, lines 51-65; discloses that the dairy fills the bags).

As per claim 5, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein said distribution method is "one way" without recovery of flexible bags for re-use (Col. 1, line 45 through Col. 2, line 32; disclose that the invention delivers the bags to the customers and the bags relieve the problem of the bottle in that they do not require re-use or recovery, thus the method is "one way").

As per claim 17, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein a commercial distributor comprises at least one party selected from the group consisting of: a single entity, and a vertically integrated entity, servants, contractors and agents of either entity (Col. 4, line 74 through Col. 5, line 12, Col.5 lines 44-51; discloses that the bags are filled and then distributed thus the commercial

distributor fills the bags. Col. 3, lines 51-65; discloses that the dairy fills the bags, therefore the commercial distributor is single entity a dairy farm).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 4, 6, 11-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over J.L. Kastamo et al. (3,343,719) hereafter Kastamo.**

As per claim 4, Kastamo discloses the above-enclosed invention, Kastamo fails to explicitly disclose wherein said beverage contained in a flexible bag is drinking water.

However, Kastamo states that other liquid foods and beverages would also benefit from this method and system (Col. 2, lines 25-32; states that the same ideas could be applied to other liquid products, thus it would have been obvious that the beverage is water).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the system and method provided by Kastamo, could be used with water, since as stated in Kastamo the invention could be used with other liquid products, obviously including water. Further it is old and well known to deliver water to customers using bottles, it would have been obvious to use the flexible bags found in Kastamo for the same reasons set forth in Kastamo, increased sanitation and reduced overall cost.

As per claim 6, Kastamo discloses the above-enclosed invention, Kastamo fails to explicitly disclose wherein said commercial distributor positions said flexible bag containing water in a dispenser for delivery of the water to the end consumer.

However, Kastamo discloses that the flexible bags are delivered to the customers and that the customer positions the bag (Col. 5, lines 44-51 and Col. 11, lines 22-36; disclose that the bag is delivered and installed, it would have been obvious that the delivery person would install or position the bag in the dispenser as a part of the customer service. For example as part of the original delivery showing the customer how the dispenser works and how the bag is to be placed in the dispenser. Further it would have been obvious as part of the customer service to install the bag for the customer if they have difficulty working the equipment, for example if the customer is impaired or not capable of working the dispenser).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system and method provided by Kastamo, so that the commercial distributor positions said flexible bag for the end consumer, as a part of the customer service. For example as part of the original delivery showing the customer how the dispenser works and how the bag is to be placed in the dispenser. Further it would have been obvious as part of the customer service to install the bag for the customer if they have difficulty working the equipment, for example if the customer is impaired or not capable of working the dispenser.

As per claim 11, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein the flexible bag incorporates at least one handle (Col. 11, lines 5-21; disclose that the bag includes at least one handle).

As per claim 12, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein said flexible bag is positioned in said dispenser by said at least one handle (Col. 11, lines 5-36; disclose that the bag includes a handle and that the bag is lowered into the dispenser, from this it would have been obvious that the bag is positioned using the handle to lower the bag into the dispenser).

As per claim 13, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein said flexible bag, when positioned in said dispenser, allows substantially complete drainage of the liquid contents from said flexible bag (Col. 11, lines 5-36; disclose that the bag is lowered into the dispenser, upon installation into the dispenser the dispenser allows for substantially complete drainage of the liquid contents of the bag).

As per claim 14, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein said dispenser has a housing having a base, the base being angled with respect to a vertical axis of the housing, to allow substantially complete drainage of the liquid contents from said flexible bag (Col. 11, lines 5-36; disclose that the bag is lowered into the dispenser, upon installation into the dispenser at an angle with respect to the vertical axis, the dispenser allows for substantially complete drainage of the liquid contents of the bag).

As per claim 15, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein said housing of said dispenser has an inner wall and a shield is located between said flexible bag and said inner wall of said housing to protect a lower portion of the flexible bag from damage (Figure 3, Col. 3, lines 58-65; disclose that the flexible plastic bag is deposited into the paper bag which is then placed in the dispenser, the paper bag is to act as a shield to protect the flexible bag and to protect the dispensing valve from damage, dirt and tampering).

As per claim 16, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein said flexible bag is communicated with a tap for delivery of water for consumption by the consumer and said shield is located proximate said tap (Figure 3, Col. 3, lines 58-65; disclose that the flexible plastic bag is deposited into the paper bag which is then placed in the dispenser, the paper bag is to act as a shield to protect the flexible bag and to protect the dispensing valve from damage, dirt and tampering, since the paper bag is surrounding the plastic bag the shield is located proximate to the tap or valve).

As per claim 19, Kastamo discloses a method of distributing drinking water contained in flexible bags filled with drinking water under sterile conditions to a consumer of drinking water in return for payment (Col. 2, lines 13-33; discloses that the invention is directed toward a method of delivering liquid goods, in a sanitary environment. Col. 3, lines 28-65; disclose that this process includes flexible bags and they are delivered to their customers) and comprising the following steps:

a) filling the flexible bags with water through a spout or tap forming part of each flexible bag (Col. 4, line 74 through Col. 5, line 12; discloses that the flexible bags are filled through a spout or tap forming part of the flexible bag thus avoiding residue from a sealing process);

b) locating said flexible bags filled with drinking water in a bulk transport container having a capacity for a plurality of flexible bags (Col. 3, lines 66 through Col. 4, line 12 and Col. 5, lines 44-51; disclose that flexible bags are filled with liquid and transported to the customer therefore they are located in the transport vehicle which is a bulk transport container which holds a plurality of flexible bags);

c) transporting, by the commercial distributor, of the bulk transport container, in which the filled flexible bags are located, to a consumer of said drinking water (Col. 3, lines 66 through Col. 4, line 12 and Col. 5, lines 44-51; disclose that a truck is used to deliver the flexible bags containing liquid to the customer or consumer);

d) unloading of required quantity of flexible bags filled with drinking water for delivery to the consumer (Col. 3, lines 66 through Col. 4, line 12 and Col. 5, lines 44-51; discloses that the housewife or consumer receives the flexible bag containing the liquid, therefore the flexible bag is unloaded from the delivery truck); and

e) mounting a flexible bag in a dispenser for dispensing the drinking water for to an end consumer (Col. 5, lines 44-51 and Col. 11, lines 22-36; disclose that the bag is delivered and installed),

wherein, said distribution method is "one way", without recovery of flexible bags for re-use, and wherein, through each step, hazard and critical control points during

distribution of the drinking water are minimized (Col. 1, line 45 through Col. 2, line 32; disclose that the invention delivers the bags to the customers and the bags relieve the problem of the bottle in that they do not require re-use or recovery, thus the method is "one way". Col. 2, lines 13-33; discloses that the entire process is done at a very high degree of sanitation thus minimizing the hazard and critical control points during distribution and dispensing).

Kastamo fails to explicitly disclose wherein said beverage contained in a flexible bag is drinking water.

However, Kastamo states that other liquid foods and beverages would also benefit from this method and system (Col. 2, lines 25-32; states that the same ideas could be applied to other liquid products, thus it would have been obvious that the beverage is water).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the system and method provided by Kastamo, could be used with water, since as stated in Kastamo the invention could be used with other liquid products, obviously including water. Further it is old and well known to deliver water to customers using bottles, it would have been obvious to use the flexible bags found in Kastamo for the same reasons set forth in Kastamo, increased sanitation and reduced overall cost.

7. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over J.L. Kastamo et al. (3,343,719) hereafter Kastamo, in view of Glacier Mountain: www.glacermountain.com (Dec. 15, 2003) hereafter Glacier Mountain.**

As per claim 7, Kastamo discloses the above-enclosed invention, Kastamo further discloses wherein said commercial distributor supplies the dispenser (Col. 3, lines 43-50; disclose that dispensers or substantially rigid containers are provided at the customers location).

Kastamo, however fails to explicitly disclose that the dispenser is supplied and maintained in return for payment.

Glacier mountain, which talks about water delivery, teaches that it is old and well Known to supply and maintain a water dispenser in return for payment (Page 1; teaches that Glacier Mountain sell or rent coolers or dispensers to their customers and also maintain these coolers as part of their Stay Pure Program in which the cooler is serviced regularly to ensure that the customer receives the best possible product, since Kastamo includes a dispenser it would have been obvious to rent these dispensers and maintain them as shown in Glacier Mountain as a part of customer service).

Therefore, from this teaching of Glacier Mountain, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify system and method provided by Kastamo, to include the supply and maintenance of dispensers for payment as taught in Glacier Mountain, for the purpose of providing the customer additional services and enticing them to purchase the distributors products. In this case the distributor rents the dispenser and maintains it to ensure that the customer is receiving the best possible product, which in turn would create more loyal customers.

8. **Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over J.L. Kastamo et al. (3,343,719) hereafter Kastamo, in view of Chep: www.chep.com (June 3, 2002) hereafter Chep.**

As per claim 8, Kastamo discloses the above-enclosed invention, Kastamo fails to explicitly disclose wherein said bulk transport container is a variable capacity adaptive to varying quantities of flexible bags in accordance with consumer demand.

Chep, which talks about crates used in bulk transport of products, teaches using a bulk transport container that has variable capacity adaptive to varying quantities of products (Page 1; teaches a container which is collapsible to reduce storage and transport space, thus the container is variable capacity depending on the requirements, the applicant on page 8 of the originally filed specification states that similar products from Chep can be used in conjunction with the method, when used in Kastamo it would have been obvious that using these products would save on storage and transport space as stated in Chep, these products help to achieve a 50% storage savings and help ensure the products reach customers in the best possible condition, from this it would have been obvious to use such a container in Kastamo to ensure that the customer receives the product in the best possible condition).

Therefore, from this teaching of Chep, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify system and method provided by Kastamo, with the use of collapsible contains as taught by Chep, for the purposes of reducing storage and transportation space, further Chep shows that these containers would have been an obvious choice by one of ordinary skill in the art since

they help ensure the products reach customers in the best possible condition, while still reducing storage space as needed.

As per claim 9, the combination of Kastamo and Chep discloses the above-enclosed invention, Chep further teaches wherein said bulk transport container is of a cubic design having a smooth wall and base construction thereby reducing risk of damage to, and contamination of, said flexible bags (Page 1; teaches that the bulk container or crates are cubic design having smooth walls to reduce product damage, thus reducing contamination of the products).

As per claim 10, the combination of Kastamo and Chep discloses the above-enclosed invention, Chep further teaches wherein said bulk transport container is made of a polymer suitable for use in food grade environments (Page 1; teaches that the bulk container or crate is made of a plastic that helps ensure that the product reaches the consumer in the best possible conditions, which include hygiene thus the container is suitable for use in a food grade environment).

9. **Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over J.L. Kastamo et al. (3,343,719) hereafter Kastamo, in view of Material Handling Engineering: "New formula for beer distribution" (Oct 1997) hereafter Material Handling Engineering, further in view of LeRoy Utschig: "Care, custody & control" (May 1998) hereafter Utschig.**

As per claim 18, Kastamo discloses the above-enclosed invention, Kastamo fails to explicitly disclose wherein a consumer is a bailee of the flexible bags.

Material Handling Engineering, which talks about the distribution of beer, teaches that it is old and well known for liquid products to be packaged off the assembly lines and then distributed to in-house and outside contractors for distribution (Page 1, paragraphs 5 and 8 and page 2 paragraph 3; teaches that it is old and well known to package liquid products and keep them for storage either in house or by outside contractors).

Therefore, from this teaching of Material Handling Engineering, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify system and method provided by Kastamo, with the use of packaging and storing inventory before delivery as taught by Material Handling Engineer, for the purposes of ensuring delivery to the customer and to not ensure product is on hand for shipping. Material Handling Engineering teaches it is old and well known as part of inventory management to have a number of packaged products on hand stored in inventory awaiting delivery.

While the combination of Kastamo and Material Handling Engineering fails to teach that the consumer is a bailee. Utschig, which talks about examples of when a person becomes a bailee of a product, teaches that upon storing a product the person becomes the bailee of the product (The applicant has stated that the term "consumers" may encompass owners and operators of storage facilities for storing the product for commercial distributor. Utschig page 2, paragraphs 3-6; teaches that upon storage of a product in a storage facility the owner of the storage facility becomes the bailee of the product itself, from this it would have been obvious to one having ordinary skill in the art

at the time of then invention that if the products were to be stored before delivery that the person storing the product is considered to be a bailee of the product.).

Therefore, from this teaching of Utschig, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify system and method provided by the combination of Kastamo and Material Handling Engineering, with the use of bailee agreements as taught by Utschig, since it is old and well know that once a party agrees to store a product for another party that party becomes a bailee of the product. This agreement ensures that the bailee take care of the product for the bailor. These agreements are part of law and have different meanings depending on the laws of the individual state as stated in Utschig.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. FISHER whose telephone number is (571)270-5097. The examiner can normally be reached on Mon/Fri [8am/4:30pm].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571)272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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